Supreme Court, U.S.
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No. 95-2090

In The

Supreme Court of the United States

October Term, 1995

LARRY FIELDS, Director, DAN REYNOLDS, Warden of Oklahoma State Penitentiary; CALVIN S. MUSE, Chairman of the Board of Corrections; HUGH REED; WILLIAM EVANS; PHIL DESSAUER; JOE R. MANNING, JR.; GREGORY H. HALL; and DANIEL BINTZ, all members of the Oklahoma Board of Corrections; OKLAHOMA BOARD OF CORRECTIONS,

Petitioners,

v.

BOBBY BATTLE, et al.,

Respondents,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals applied the proper legal standard in reviewing the district court's Rule 60(b) order.

2. Whether petitioners may contest the district court's jurisdiction to enter an order leaving remedial injunctions in effect when (i) the district court entered the order in 1983 at the urging of petitioners; (ii) petitioners urged affirmance of that order on appeal; and (iii) petitioners failed to seek a timely review of the order in this Court.

3. Whether petitioners' claim that the Prison Litigation Reform Act applies to this pending case and requires dissolution of the existing injunctions is ripe for this Court's review.

LIST OF INTERESTED PARTIES

The parties to the proceeding on Petition for Writ of Certiorari who were not included in the Petition are:

Respondents

The following are respondents before this Court and were plaintiffs in the district court and appellants in the United States Court of Appeals for the Tenth Circuit:

* All persons incarcerated by the Oklahoma Department of Corrections.

The following is also a respondent in this Court and was a plaintiff-intervenor in the district court and appellant in the United States Court of Appeals for the Tenth Circuit:

* United States of America

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STATEMENT OF THE CASE

The injunctive orders at issue in this case were entered in 1974 and 1979. The injunctive relief ordered in 1974 was based upon findings of fact and conclusions of law entered upon a full trial before the United States District Court for the Eastern District of Oklahoma, Bohanan, J. The findings of fact and conclusions of law set out in detail the serious constitutional violations existing in the Oklahoma prison system. *Battle v. Anderson*, 376 F. Supp. 402 (E.D. Okla. 1974). The defendants did not appeal that order.

The 1979 injunctions were entered after a series of hearings and appeals concerning the conditions of confinement in Oklahoma prisons, as well as medical care, racial segregation and discrimination, and court access. The 1979 injunctions were based on findings made by the district court in 1977 and 1978 that specific conditions in Oklahoma's prisons violated the Constitution, and contained orders to remedy those conditions. *Battle v. Anderson*, 447 F. Supp. 516 (E.D. Okla. 1977) and *Battle v. Anderson*, 457 F. Supp. 719 (E.D. Okla. 1978). The defendants conceded the unconstitutionality of those conditions on appeal and urged a remand of the proceedings in order to be heard further concerning the remedy. *Battle v. Anderson*, 594 F.2d 786 (10th Cir. 1979). Upon remand the district court accepted in full a remedy proposed by the defendants. No. 72-95-B (E.D. Okla. May 4, 1979) (Appendix A).

In 1983 the defendants moved the district court to dismiss the case but did not request the dismissal of the

remedial injunctions. *See* No. 72-95-C, Dfts. Mot. to Dismiss, Sept. 7, 1983. After an evidentiary hearing, the court found, "there have been disturbances, problems, and inadequacies in the Oklahoma prison system since the court's last findings" only one year earlier. No. 72-95-C, slip op. at 6 (E.D. Okla. Dec. 30, 1983). The trial court specifically held "four subjects of previous court orders that are still found to be inadequate and not in compliance." *Id.* The defendants were found to have failed to comply with orders dealing with racial segregation and discrimination, court access, and equal protection for women. Inmates were still held in cell houses which had been condemned as unfit for human habitation and ordered closed. Despite these serious problems, the court accepted defendants' promises to take future remedial steps: "[E]ach area of continued violation has been specifically addressed by the State and is subject to a specifically planned remedy." *Id.* The district court ended its active supervision of this case, discharging the court's monitor, but specifically left intact all injunctions in order to secure defendants' promises. *Id.* slip op. at 8. The plaintiffs appealed.

It was petitioners' considered judgment not to appeal the order which left the injunctions in force. Instead, petitioners urged the Court of Appeals to leave the injunctions in place, acknowledging that the injunctions were petitioners' bond upon which the district court had based its decision to end its active supervision. Petitioners urged the circuit:

> [T]his Court may conscientiously affirm the district court's dismissal of supervisory jurisdiction, **particularly** where the district court left in force and effect its prior injunctions as modified.

Battle v. Anderson, No. 84-1026, Brief of Appellees, June 1984 at 104 (emphasis supplied). The Court of Appeals likewise accepted petitioners' promises of future compliance upon the assurance that petitioners' failure to meet those promises could be redressed in proceedings before the district court to enforce the injunctions. *Battle v. Anderson*, 788 F.2d 1421, 1429 (10th Cir. 1986). In the area of racial discrimination and segregation, however, the Court of Appeals held that the district court's findings were inadequate to permit review and, accordingly, remanded the case for further proceedings. *Id.* at 1425.

Petitioners failed to keep their promises of remedial measures. They began using the day rooms at the reception center as open dormitories. The petitioners conceded that it was a dangerous practice which mixed hardened prison veterans with first-time offenders less capable of self-defense in an environment where staff could not adequately protect weaker inmates from injury. (R. 110, Ex. B) Because of such dangers, the practice previously had been condemned by the district court, *Battle*, 447 F. Supp. at 522, and enjoined. No. 72-95-B, slip op. at 4 (E.D. Okla. May 4, 1979). As earlier anticipated by the courts, respondents moved the district court for an order enforcing the injunction against such practices. In response to plaintiffs' enforcement motion and without notice or hearing, the district court dissolved the injunctions *sua sponte*. (R. 120) On appeal, the circuit reversed and remanded the case for a hearing. (R. 158) *Battle v. Fields*,

No. 94-7175, slip op. at 2 (10th Cir. June 27, 1995). Petitioners did not seek a writ of certiorari.

While the case was pending in the Court of Appeals, petitioners resumed using two of the condemned cell houses that had been ordered closed. On remand plaintiffs sought to enforce the injunctions' prohibition against use of the condemned cellhouses.[1] (R. 166)

Also on remand and for the first time in the history of this case, petitioners sought to dissolve the injunctions. Citing Fed.R.Civ.P. 60(b), petitioners moved to dissolve all existing injunctions other than those prohibiting racial segregation and discrimination. (R. 162)

Again, and in contravention of the appellate court's order of remand, the trial court dissolved the injunctions without a hearing. (R. 181) No. 72-95-C, slip op. at 3 (Nov. 15, 1995). In spite of having heard no evidence, the district court made findings concerning the defendants' compliance. *Id.*

On appeal the Tenth Circuit again remanded for an evidentiary hearing on the outstanding matters, including the defendants' Rule 60(b) motion to dissolve the injunctions. *Battle v. Fields,* No. 95-7164 (10th Cir. March 29, 1996). (Petitioners' Appendix A at 4-5) The defendants have now sought a writ of certiorari.

Upon issuance of the Tenth Circuit's mandate, the district court ordered briefs from all parties concerning

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[1] The plaintiffs also sought to enforce orders which enjoined housing three inmates in a cell at one of the women's prisons, the Mabel Bassett Correctional Center. (R. 174).

applicability of the Prison Litigation Reform Act (PLRA) to this pending case. Concurrent with the filing of their brief in the district court, petitioners filed a second motion to dismiss, citing the PLRA, 18 U.S.C. § 3626(b)(2). The trial court has not ruled on the petitioners' motion.

CORRECTIONS OF MISSTATEMENTS IN THE PETITION.

Pursuant to United States S. Ct. Rule 15.2, respondents bring to the Court's attention the following misstatements of fact in the Petition.

The Petition misrepresents the lower court proceedings and petitioners' role in those proceedings. All of the remedial orders entered in this case have been agreed to by officials of the State of Oklahoma, including the 1983 district court order, No. 72-95-C (Dec. 30, 1983), *aff'd*, 788 F.2d 1421 (10th Cir. 1986), which left all of the injunctions intact. Although petitioners now assert the court was without jurisdiction to leave intact the injunctions, they urged the district court to adopt those very injunctions and urged the Court of Appeals to affirm the district court's order. *See* Brief of Appellees, June 1984 at 104.

Petitioners contend that respondents raised "totally new allegations" in the district court proceedings to enforce the injunctions. Petition for Writ of Certiorari at 2, 7. That contention is wrong. The issue of petitioners' use of the condemned cell houses is one of long standing in this case. The issue was first addressed by the district court in 1977. Upon an extensive evidentiary record, conditions in these cell houses were condemned and the court found the cell houses unfit for human habitation.

Battle, 447 F. Supp. at 522-23, and *Battle*, 457 F. Supp. at 723-26.

Petitioners conceded on appeal the sufficiency of the evidence to support the district court's conclusion that the use of these cell houses violated Eighth Amendment standards of decency. *Battle*, 594 F.2d at 792. Moreover, the use of these cell houses was one of the cited failures in compliance the district court criticized in 1983. No. 72-95-C, slip op. at 7 (Dec. 30, 1983). The court's decision to end active supervision was based on petitioners' promises to remedy those failures and, with specific reference to the cell houses, petitioners promised to close them "as soon as feasible." *Id.* An application by the plaintiffs seeking to enforce the order against the use of these cell houses cannot at all be considered raising "totally new allegations."[2]

Citing precisely the finding reversed by the Court of Appeals, petitioners contend that the district court "recogniz[ed]" their compliance with the injunctions. Petition for Writ of Certiorari at 6-7. The district court's conclusion, found to be without sufficient factual support and reversed, is the sole basis for petitioners' "jurisdictional" argument. It is a misstatement of the law of this case and cannot support issuance of the writ.

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[2] Likewise, the issues of disparate treatment of women and the practice of triple celling are not "new issues." Triple celling was enjoined by the court when it eased its order concerning single celling. No. 72-95-C (Jan. 12, 1982). Petitioners agreed in 1979 to remedy the disparate treatment of women, and in 1983, the district court found petitioners were failing to meet that guarantee. No. 72-95-C, slip op. at 7 (Dec. 30, 1983). *See* 788 F.2d at 1425-26.

The Petition offers additional misstatements in an effort to support the district court's dissolution of the injunctions. First, the parties before the trial court were never given notice or an opportunity to be heard, contrary to petitioners' suggestion. *Id.* at 7. What the petitioners present as "notice" was an order to brief a narrow point of law. No. 72-95-C (Sept. 21, 1995). Second, petitioners erroneously suggest that they had demonstrated by a factual record that they "met the appropriate standards for dissolution of the [alleged] out of date injunctions." *Id.* at 6. The record does not support the petitioners' contention that "the system has been determined constitutional since 1982." *Id.* at 2. No facts in the record support that statement. At the same time, respondents' allegations of current unconstitutional conditions, violative of existing injunctions in this case, stand virtually uncontested. The evidentiary record in this case stands as it did in 1983. Since September 1983, the district court has not conducted a hearing or received evidence.

REASONS FOR DENYING THE WRIT

I. ISSUANCE OF PETITIONERS' WRIT IS NOT WARRANTED UNDER SUPREME COURT RULES

Petitioners assert that a grant of their petition is proper because the ruling of the Court of Appeals is "extra-jurisdictional" and in conflict with applicable decisions of this Court. Petition for Writ of Certiorari at 8. Rule 10.1 of the Rules of the Supreme Court advises of the "special and important reasons" that may justify issuance of a writ of certiorari. No such reasons exist.

Here, petitioners do not claim the existence of any conflict among the courts of appeal, or any conflict between the ruling below and any ruling of the courts of the State of Oklahoma. The decision below merely applied settled law to a specific set of factual allegations and, therefore, does not merit plenary review.

Second, the ruling of the Court of Appeals is in fact consistent with prior holdings of this Court. The ruling ordered only that the district court improperly, and contrary to the prior mandate, failed to give the parties notice or conduct an evidentiary hearing that would provide a factual record upon which to review the district court's dissolution of the extant injunctions.[3]

Finally, petitioners assert that the PLRA, enacted after the ruling of the Court of Appeals, must be applied to this pending case, that the Act obviates an evidentiary hearing in the district court, and requires the immediate dissolution of the extant injunctions. Petitioners fail to articulate why this Court should address whether and in what manner this new statute applies to this case. That precise question is pending before the district court[4] and

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[3] In fact, the decisions of the Court of Appeals throughout the course of this litigation demonstrate that the court consistently has deferred to the judgments of state officials to the maximum extent possible, with the goal of withdrawing the courts' supervision as soon as the facts and law allow. Contrary to the implication in the Petition, the rulings of the Court of Appeals presaged recent decisions of this Court regarding the role of the federal courts in institutional reform litigation.

[4] On July 10, 1996, petitioners, respondents and plaintiff-intervenor filed simultaneous briefs on the issue with the United States District Court for the Eastern District of Oklahoma, No. 72-95-B.

has not yet been presented to the Court of Appeals in the context of this case. This fact alone suggests the propriety of denying the writ.

II. THE COURT OF APPEALS APPLIED THE CORRECT LEGAL STANDARDS

Two guiding principles regarding the extant injunctions in this case have always been (1) the right of the respondents to due process in the enforcement of the relief awarded by the court in this action, and (2) the importance of a full record to support any modification of the equitable relief to which respondents proved they were entitled under the Constitution. In its review, the Court of Appeals acknowledged and gave deference to each of these fundamental legal principles.

A. SCOPE OF JUDICIAL REVIEW

The Court of Appeals construed respondents' motion in the district court to enforce the existing injunctions as a motion filed pursuant to Fed.R.Civ.P. 60(b)(5). It is settled law that the district court's have broad discretion under Rule 60(b)(5) to enforce or modify their previous judgments, and that such orders are reviewed only for an abuse of discretion.[5] The Tenth Circuit has consistently

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[5] The scope of review in the circuit courts of appeal is not in conflict; all circuits review district court orders under Fed.R.Civ.P. 60(b) using an abuse of discretion standard. *E.g., Fiore v. Washington County Mental Health Center*, 960 F.2d 229, 234 (1st Cir. 1992); *Still's Pharmacy, Inc. v. Cuomo*, 981 F.2d 632, 637 (2d Cir. 1992); *Central W. Rental Co. v. Horizon Leasing, Div. of*

utililized an abuse of discretion standard in reviewing the decisions of the district courts under Fed.R.Civ.P. 60(b). *E.g., Elsken v. Network Multi-Family Sec. Corp.*, 49 F.3d 1470, 1476 (1995); *Cox v. Sandia Corp.*, 941 F.2d 1124, 1125 (1991). It was under this limited scope of review that the Court of Appeals found, on the specific facts before it, that the decision of the district court to deny respondents' motion and dissolve the existing injunctions without notice or a hearing "constitutes an abuse of the district court's discretion." *Battle v. Fields*, No. 94-7175, slip op. at 2 (June 27, 1995) (1995 U.S.App. LEXIS 15927). Thus, the Court of Appeals conducted a proper review of the district court's decision.

B. THE COURT OF APPEALS CORRECTLY ORDERED AN EVIDENTIARY HEARING

Petitioners claim that the Court of Appeals "fail[ed] to recognize that the district court has no power to continue to enforce post-dismissal injunctions." Petition for Writ of Certiorari at 2. That claim is legally insupportable,

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Horizon Financial, F.A., 967 F.2d 832, 836 (3d Cir. 1992); *In re Burnley*, 988 F.2d 1, 3 (4th Cir. 1992); *Aucoin v. K-Mart Apparel Fashion Corp.*, 943 F.2d 6, 8 (5th Cir. 1991); *Davis v. Jellico Community Hosp.*, 912 F.2d 129, 132-33 (6th Cir. 1990); *Rodgers v. Wood*, 910 F.2d 444, 449 (7th Cir. 1990); *Printed Media Serv. v. Solna Web, Inc.*, 11 F.3d 838, 842 (8th Cir. 1993); *Richmark Corp. v. Timber Falling Consultants, Inc.*, 937 F.2d 1444, 1448 (9th Cir. 1991); and *Delancy v. St. Paul Fire & Marine Ins. Co.*, 947 F.2d 1536, 1545 (11th Cir. 1991).

and has been properly rejected twice by the Court of Appeals.[6]

The Court of Appeals properly required the district court to address the allegations that petitioners are violating the existing injunctions. As the Court of Appeals had stated earlier, "[t]he district court is the only court equipped to test evidentiary compliance and the only forum in which to raise any allegations of continuing deficiencies." *Battle v. Anderson*, 708 F.2d 1523, 1539 (10th Cir. 1983) (quotation omitted). Moreover, the Court of Appeals correctly determined that a factual record is no less necessary when legal standards change:

> To the extent that changed legal standards apply, one of the major purposes of a factual presentation is to establish on a point by point basis how such standards do or do not affect the existing injunctions. The resulting analysis and disposition by the court will be directed to a relevant factual record. The evidence, together with the findings and conclusions of the district court, will then provide the record necessary for appellate review. It is the absence of such a record that prompted our remand in the first place.

Battle v. Fields, Nos. 95-7164, 95-7013 slip op. at 5.

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[6] Respondents have twice attempted to assert this argument and have twice been rejected. *Battle*, 708 F.2d at 1539; Nos. 95-7164 and 96-7013 (10th Cir. Mar. 29, 1996). "It is too late in the day in this litigation to dispute the existence and vitality of injunctions affecting the parties." Nos. 95-7164 and 96-7013, slip op. at 4.

Petitioners' desire to end supervision of Oklahoma's prison system cannot be achieved by simply denying the equitable power of the court to supervise the existing injunctions. This Court has cautioned that "[a] court's discretion to order the incremental withdrawal of its supervision in a school desegregation case must be exercised in a manner consistent with the purposes and objectives of its equitable power." *Freeman v. Pitts*, 503 U.S. 467, 491, 112 S.Ct. 1430, 1446, 118 L.Ed.2d 108, 134 (1992). That direction is equally applicable to other institutional reform litigation such as this action involving prison conditions. *See Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992).

In determining whether modification of an existing decree in institutional reform litigation is proper, this Court has set out a specific process requiring that defendants prove (1) they have complied with the court orders, and (2) their actions demonstrate that continued judicial supervision is unnecessary to guarantee their future compliance with constitutional standards. *Board of Educ. of Okla. City v. Dowell*, 498 U.S. 237, 249, 111 S.Ct. 630, 637, 112 L.Ed.2d 715, 729 (1991); and *Freeman v. Pitts*, 503 U.S. at 492, 112 S.Ct. at 1446, 118 L.Ed.2d at 134-35. This Court has recognized that the process in each case "turns on a careful assessment of the facts." *Freeman v. Pitts*, 503 U.S. at 474, 112 S.Ct. at 1437, 118 L.Ed.2d at 124. This Court observed further that "[p]artial relinquishment of judicial control, where justified by the facts of the case, can be an important and significant step in fulfilling the district court's duty to return the operations and control of [the institution] to local authorities." *Id.* at 489, 112 S.Ct. at 1445, 118 L.Ed.2d at 133.

Here, the Court of Appeals' decision merely acknowledged that a decision to relinquish judicial control cannot be made in the absence of a factual record. Because the Court of Appeals correctly found that the district court had abused its discretion in failing to hold an evidentiary hearing, it properly vacated the order of the district court and remanded the action for further proceedings. Petitioners' desire to have obtained a different result when the proper legal standard was applied by the Court of Appeals to the record provides no basis for the writ.

III. THE PETITION SEEKS TO REVERSE A 1983 ORDER WHICH PETITIONERS NEITHER CONTESTED NOR APPEALED

In 1983 the district court found wide-spread violations of its orders. *Battle v. Anderson*, No. 72-95-C (E.D. Okla. Dec. 30, 1983). Repeatedly, the court deferred to petitioners' plans and promises to remedy those deficiencies. The court found the cells in Oklahoma's prisons remained racially segregated. The court, though, was satisfied by the "Defendants' Plan . . . approved and ordered its adoption." *Id.* at 6. As for equal protection guarantees for women, which were found inadequate in areas of programs, medical care and exercise, the court found "specific remedies outlined in the Defendants' plan." *Id.* The use of the condemned cell houses was to be remedied by "assurances from Director Meachum and Governor Nigh" that they would be "vacated as soon as feasible." *Id.* Ultimately, it was the defendants' plans and promises to comply in the future with the Constitution that the

court found acceptable, not the prison conditions then existing. *Id.* at 9. The district court accepted these assurances and ended its active oversight, leaving the outstanding injunctions in place to secure those promises. *Id.* at 10.

The respondents appealed the 1983 order. Petitioners did not contest the order and urged that the Court of Appeals could "conscientiously affirm" the district court's order which relied on promises of compliance because the injunctions were still in full force and effect. *See Battle*, No. 84-1026, Brief of Appellees, June 1984 at 104. The Court of Appeals affirmed the dismissal of active supervision as to all issues, except racial discrimination, and affirmed the continuation of the injunctions. *Battle v. Anderson*, 788 F.2d at 1429. Petitioners did not appeal that decision.

Thirteen years later, petitioners now seek review of the 1983 decision entered at their urging, using the Circuit's order of remand as a guise. Even if that decision was properly before this Court for review, the order was clearly consistent with the remedial authority of the district court. The injunctions that remain in effect were proposed by defendants and entered by the court to remedy admitted constitutional violations. The promises of remedial actions, which were accepted by the district court in 1983, were directed specifically at achieving compliance with those injunctions. The order leaving the injunctions in force, secured those promises. That remedial order was well within the authority of the court. *Miliken v. Bradley*, 433 U.S. 267, 282, 97 S.Ct. 2749, 2758, 53 L.Ed.2d 745, 757 (1977) ("[T]he remedy does not exceed

the violation if the remedy is tailored to cure the condition that offends the Constitution.") *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15, 91 S.Ct. 1267, 1276, 28 L.Ed.2d 554, 566 (1971) ("The essence of equity [is] the power . . . to mold each decree to the necessities of the particular case.") There can be little doubt that the district court order in 1983 was designed to achieve a lasting cure for the wide-spread violations which continued to exist. A timely appeal by these petitioners from the 1983 order would have failed. Their attempt to achieve a review today should also fail.

IV. THE HISTORY OF THIS CASE EVIDENCES LIMITED AND APPROPRIATE FEDERAL SUPERVISION

The record in this case does not provide petitioners an adequate vehicle for the central proposition petitioners urge on this Court. Contrary to the petitioners' assertions, this case is not an example of the "unwarranted perpetuation" of court supervision of a state institution. Petition for Writ of Certiorari at 2.[7]

In 1978 the district court found the conditions in old cell houses in two Oklahoma prisons to be unfit for human habitation. *Battle*, 457 F. Supp. at 723-25. The court also found other serious health, safety and sanitation problems in Oklahoma's prison system violated the

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[7] The record in fact speaks to the constitutional dangers of a federal court's excessive deference to state officials. During the past thirteen years no hearings have been held, no evidence has been considered, and respondents have waited two years to be heard on allegations that the injunctions are being violated.

Eighth Amendment. *Battle*, 457 F. Supp. at 724. Petitioners did not challenge those findings on appeal, but rather, conceded the unconstitutionality of the identified conditions. *Battle*, 594 F.2d at 792. Consistent with procedures recently found by this Court to be required in institutional reform litigation, *Lewis v. Casey*, 518 U.S. ___, ___, 116 S.Ct. 2174, 2185, 135 L.Ed.2d 606, 625 (1996), the Court of Appeals allowed the petitioners to propose their own remedy for these constitutional violations. *Battle*, 594 F.2d at 793. The State's proposed remedial plan was adopted verbatim, including the requirement that the condemned cell houses be closed by January 1982. *Battle*, No. 72-95-C, slip op. at 3-4 (E.D. Okla. May 4, 1979).

In 1983 the condemned cell houses were still occupied and the district court found additional violations of the court's orders in virtually all areas of Oklahoma's prison system. *Battle*, No. 72-95-C, slip op. at 6-7 (E.D. Okla. Dec. 30, 1983). Again, the district court deferred to State officials, and their promises to end these violations of the Constitution "as soon as feasible" were fully accepted as adequate. *Id.* Petitioners urged on appeal that the court could "conscientiously" accept such promises, because the injunctions remained intact. *Battle*, No. 84-1026, Brief of Appellees, June 1984 at 104.

Petitioners do not contest that they have reopened these dangerous cell houses[8] in direct violation of their

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[8] The petitioners have failed in their commitments in other important respects, as detailed in the *Plaintiffs Report to the Court and Parties*, Mar. 11, 1994 (R. 85). These failures include failures in basic sanitation and health as well as violations of orders relating to equal protection for women inmates,

commitments to the court and the court's injunctions. An inmate recently died as the result of unsafe wiring, one of the dangerous conditions that necessitated the court's 1979 order closing the cell houses. *Battle*, 457 F. Supp. at 724. R.168 at 5. Today, inmates are still held in these condemned facilities and remain in imminent danger due to the very conditions which required the closing of the cell houses 17 years ago. *Id.*

Throughout the course of this litigation, the courts have deferred to the judgments and requests of State officials. The petitioners' promises of reform have been accepted at face value and State officials have been afforded ample opportunity to achieve compliance. In spite of this, many of the same serious constitutional violations identified nearly two decades ago remain. The time has long passed when the petitioners' failures to comply with the Constitution and with the court's remedial orders should be accepted.

> Courts certainly have a responsibility to scrutinize claims of cruel and unusual confinement, and conditions in a number of prisons, especially the older ones, have justly been described as 'deplorable' and 'sordid.' When conditions of confinement amount to cruel and unusual punishment, federal courts will discharge their duty to protect constitutional rights.

Rhodes v. Chapman, 452 U.S. 337, 352, 101 S.Ct. 2392, 2402, 69 L.Ed.2d 59, 73 (1981) (citations and internal quotation

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continued racial segregation in cell assignments, fire safety and medical care.

marks omitted). The hearing ordered by the Tenth Circuit Court of Appeals should be held.

V. THE ISSUE OF THE APPLICATION OF THE PRISON LITIGATION REFORM ACT IS NOT RIPE FOR REVIEW

The justiciability of a controversy is a necessary predicate to this Court's exercise of its article III power to adjudicate only actual cases or controversies. U.S. Const. art. III, § 2; *See Aetna Life Ins. Co. v. Hayworth*, 300 U.S. 227, 57 S.Ct. 461, 81 L.Ed. 617 (1937). Justiciability demands that a question be ripe for adjudication. *Communist Party v. Subversive Activities Control Bd.*, 367 U.S. 1, 71, 81 S.Ct. 1357, 1397, 6 L.Ed.2d 625, 674 (1961). This Court has consistently reiterated that it will decline to hear cases prematurely, a concept inherent in the principle of ripeness. *E.g., Renne v. Geary*, 501 U.S. 312, 315-16, 111 S.Ct. 2331, 2336, 115 L.Ed.2d 288, 298 (1991).

Cases challenging the application of new legislation are premature when it is not clear whether, or in what manner, the statute will be applied to the claimant. *Id. See also Toilet Goods Ass'n v. Gardner*, 387 U.S. 158, 163-64, 87 S.Ct. 1520, 1525, 18 L.Ed.2d 697, 701-02 (1967) (challenge to agency regulation premature before it can be determined how and in what manner regulation would be applied to claimant). Here, petitioners assert that the PLRA, enacted after the decision of the Court of Appeals, is applicable to this case and requires the dissolution of the extant injunctions. That issue is not, however, ripe for this Court's review. Procedurally, the issue is pending before the district court. Neither the district court nor the

court of appeals has ruled whether and in what manner the PLRA is applicable to this case. As a matter of prudence, the question whether the new statute is applicable to this case should await the decisions of the lower courts. *E.g., Landgraf v. USI Film Products*, 511 U.S. 244, 114 S.Ct. 1483, 1488, 128 L.Ed.2d 229 (1994) (certiorari to review application of new federal statute granted after court of appeals affirmed decision of the district court that the statute was not to be applied to pending cases).[9]

Moreover, the lower courts should first address the numerous issues presented by application of the PLRA to this case despite the importance of these issues. The nature and extent of the changes wrought by the PLRA unquestionably raise serious constitutional questions. However, the exercise of this Court's discretion to grant a writ to decide important questions of federal law is

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[9] A panel of the Tenth Circuit has ruled that one section of the Act should be applied to pending cases. *Green v. Nottingham*, No. 96-511 (July 10, 1996) (1996 WL 384762). The court reached that conclusion without "the benefit of adversarial presentation, consider[ing] the important legal and factual issues inherent [in its application]." *Id.* (1996 WL 384762 at 6) (Kelly, J., dissenting). The district court in this case is now considering numerous issues not raised or considered in *Green* concerning the retroactive application of the Act in this case. Other lower federal courts are presently defining and analyzing the issues presented by this Act. *See Carty v. Farrelly*, No. CIV-94-78 (D.V.I. July 17, 1996); *Gate v. Gomez*, No. CIV-S-87-1636-LKK (E.D. Cal. July 23, 1996); *Benjamin v. Jacobson*, No. 75-CIV-3073 (H.B.) (S.D.N.Y. July 23, 1996); and, *Alexander v. Boyd*, C/A No. 3:90:3062-17 (D.S.C. May 29, 1996). These recent decisions, nevertheless, represent only the beginning of the courts' refinement of the issues presented by the PLRA.

guided by twin concerns that the Court neither unnecessarily address constitutional questions nor address such questions prematurely. "No rule of practice of this Court is better settled than 'never to anticipate a question of constitutional law in advance of the necessity of deciding it.' " *Communist Party v. Subversive Activities Control Board*, 367 U.S. at 71, 72; 81 S.Ct. at 1397, 6 L.Ed.2d at 674 (citations omitted). Throughout this Court's history, it has postponed the decision of difficult and important questions of constitutional law so long as a "reasonable alternative" exists. *Kovacs v. Brewer*, 356 U.S. 604, 607, 78 S.Ct. 963, 965, 2 L.Ed.2d 1008, 1011 (1958) (the Court will postpone the decision of difficult and important questions of constitutional law so long as a reasonable alternative exists); *West v. Atkins*, 487 U.S. 42, 48, 108 S.Ct. 2250, 2255, 101 L.Ed.2d 40, 49 (1988) (the Eighth Amendment question suggested by the parties should be addressed first by the lower courts when it is unnecessary for the Supreme Court to decide the issues in the case before it.); *Asbury Hospital v. Cass County*, 326 U.S. 207, 213-14, 66 S.Ct. 61, 64, 90 L.Ed. 6, 14 (1945). As the Court has explained, "this principle is based upon the realization that, by the very nature of the judicial process, courts can most wisely determine issues precisely defined by the confining circumstances of particular situations," *Communist Party v. Subversive Activities Control Bd.*, 367 U.S. at 72, 81 S.Ct. at 1357, 6 L.Ed.2d at 674-75, and, with respect to the questions of a statute's constitutionality as applied, after the lower courts have had the opportunity to refine the issues through statutory construction. *United States v. Petrillo*, 332 U.S. 1, 67 S.Ct. 1538, 91 L.Ed. 1877 (1947). It

is a reasonable alternative to allow the issues presented by the PLRA to be refined by the lower courts.

The application of the PLRA to this case, moreover, has neither been determined by the lower courts nor is inevitable. These difficult and important questions of constitutional law should be addressed first by the lower courts and, in only those cases where it has been decided that the new Act is applicable. An analysis in this case of the constitutional validity of the PLRA, prior to determining whether the Act applies to this case, would be tantamount to rendering an advisory opinion proscribed by article III. *Renne v. Geary*, 501 U.S. at 323-24, 111 S.Ct. at 2440, 115 L.Ed.2d at 302-03.

CONCLUSION

Based on the foregoing, the respondents respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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